IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.4353 of 2000
Date of Decision : 2.8.2007

Gian Kaur and another .....Appellants
versus
Dilbagh Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.S.S.Dinarpur, Advocate for the appellants.
Mr.R.P.S.Ahluwalia, Advocate for respondent Nos.1 & 2.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendant Nos.1 & 2 are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby decree dated 28.5.1993 was found to be illegal, null and void and not binding on the plaintiffs.

The dispute in the present case is regarding the estate of one Kulwinder Kaur. The plaintiffs are the husband and son respectively of Kulwinder Kaur. Kulwinder Kaur died on 2.6.1992. The present appellants rely upon a consent decree dated 28.5.1993, suffered by other defendants in favour of the present appellants, in respect of the estate of Kulwinder Kaur, on the basis of a family settlement purportedly arrived at during the life time of Kulwinder Kaur. It has been found by the learned First appellate Court that there could not have any family settlement in respect of the estate of deceased Kulwinder Kaur, in the manner stated by the appellants.

Kulwinder Kaur was married having a son. Therefore, any settlement could not have been arrived at by Kulwinder Kaur by ignoring and in the absence of her son Harvinder Singh. The alleged family

settlement, which was not reduced in writing, has not seen in the light of the day during the life time of Kulwinder Kaur. Only after her death, the family settlement has been given effect to by virtue of a consent decree dated 28.5.1993, suffered by brother/sister of Kulwinder Kaur and without impleading her husband and son. The said consent decree affects the rights of the plaintiffs who are the legal heirs of deceased Kulwinder Kaur, therefore, rightly ignored by the learned First Appellate Court.

Learned counsel for the appellants has contended that the plaintiffs have filed a simpliciter suit for declaration without claiming possession of the suit property. Reliance is placed on a judgment ***"Vinay Krishna versus Keshav Chandra and another, AIR 1993 S.C.957".*** Such judgment is not helpful to the appellants in as much as that was the case where the plaintiff claims to be in exclusive possession of the property as sole and absolute owner, but was not found so and had not claimed possession, even objection to this effect was taken in the written statement. However, in the present case, Kulwinder Kaur has a share in the joint property and as a consequential declaration granted, the plaintiffs' interest as joint owner is being recognized. The actual physical possession is required to be obtained from the competent Court of law in consequent proceedings, therefore, bar created under Section 42 of the Special Relief Act, 1963 would not be applicable.

In view thereof, I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court that the said decree dated 28.5.1993 is illegal, null and void and ineffective qua the rights of the plaintiffs.

Consequently, I do not find any substantial question of law arises in this appeal for consideration of this Court. The appeal stands dismissed.

2-08-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**